IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.07.2019

Pronounced on : 20.09.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P.Nos.15180 to 15182 of 2004

M/s.Adayar Gate Hotel Ltd.,
132, TTK Road,
Chennai-600 018,
rep. by its Managing Director.

... Petitioner in all the W.Ps.

Vs.

The Commissioner of Income Tax,
Chennai-I,
Room No.701, VII Floor, New Block,
121, Mahatma Gandhi Road,
Chennai-600 034.

... Respondent in all the W.Ps.

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COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the respondent ending with the order in C.No.217/CIT-I/20/264/2005-2006 dated 09.03.2007 and to quash the same by directing him to grant an opportunity to the petitioners

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and hear the revision under Section 264 of the Income Tax Act on merits.

For Petitioner : Mr.C.Manishankar, Sr. Counsel
for Mr.K.Krishnamoorthy
in all the W.Ps.

For Respondent : Mrs.Hema Muralikrishnan
Sr. Standing counsel

COMMON ORDER

The common order passed by the Commissioner of Income Tax, Chennai in respect of the Assessment Years 1995-96, 1996-97 and 1997-98, rejecting the petitioner's request to condone the delay in filing the Revision Petitions are under challenge in the present three Writ Petitions. Since the order impugned is a common order and the grounds raised in all these Writ Petitions are one and the same, a common order is passed in these Writ Petitions also.

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2. Heard Mr.C.Manishankar, learned Senior counsel for the petitioner and Mrs.Hema Muralikrishnan, learned Senior Standing

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counsel appearing on behalf of the respondent.

3. The brief facts of the cases are as follows:-

3.1. The petitioner had claimed deduction under Section 80 HHD of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for excluding the total receipts of the taxes collected as luxury tax, sales tax and expenditure tax for the Assessment Years 1992-93, 1993-94 and 1994-95. The claim was disallowed and an appeal came to be filed before the Income Tax Appellate Tribunal (ITAT). The assessment for the Assessment Years 1992-93 and 1993-94 were reopened under Section 148 of the Act to revise the deduction. While the proceedings initiated for the assessment year 1992-93 came to be dropped, the petitioner filed a second appeal for the Assessment Year 1993-94 before the ITAT.

3.2. Before the ITAT, the petitioner had placed reliance on a decision of this Court in the case of ***Commissioner of Income Tax V. Sundaram Fasteners*** reported in ***2005 (272) ITR 652***, wherein the Tribunal held that expenditure tax, luxury tax and sales tax should not be included in the total receipts of the business of the petitioner for

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the purpose of computation of deduction under Section 80 HHD of the Act. Drawing analogy from the above said decision, it was held that anything charged by the assessee by way of Excise duty and Sales tax cannot be taken into account as they did not have any element of profit in them and accordingly, the order of CIT (Appeals) was set aside.

3.3. The appeal filed by the petitioner for the Assessment Year 1994-95 was allowed on 27.06.1995, which is claimed to have been received by the petitioner on 25.08.2005.

3.4. The petitioner, on receipt of the orders passed by the ITAT on 27.06.2005, had filed a revision under Section 264 of the Act on 06.02.2006 insofar as the Assessment Year 1995-96 is concerned; on 19.05.2006 for the Assessment Year 1996-97; and on 19.05.2006 for the Assessment Year 1997-98. These revisions came to be rejected only on the ground of delay since the applications have been filed after a considerable delay, after the expiry of one year, as contemplated under Section 264(3) of the Act. These rejection orders are under challenge in the present Writ Petitions.

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4. The learned Senior cosunsel for the petitioner submitted that as soon as the ITAT had passed orders on 27.06.2005, holding that expenditure tax, luxury tax and sales tax should not be included in the total receipts of the business of the petitioner for the purpose of computation of deduction under Section 80 HHD of the Act, the petitioner had filed the applications under Section 264 of the Act to condone the delay. According to the learned Senior counsel, the petitioner did not challenge such inclusions of statutory taxes at the time of finalisation of the Assessment for the year 1995-96 since the orders of the ITAT relating to the Assessment Years 1993-94 and 1994-95 were awaited and when such relief was granted by the ITAT, the petitioner had filed the revision and as such, the reason for filing the revision belatedly could be termed as 'sufficient cause', for condoning the delay.

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5. The learned Standing counsel for the respondent stated that insofar as the earlier Assessment orders are concerned, the petitioner had chosen to file an appeal against the assessment orders, whereas

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in the instant case, it was not done so and the assessment orders have become final. Hence the petitioner is precluded from proceeding further on these assessment orders by filing an application under Section 264 of the Act with an inordinate delay. In support of her contentions, the learned Standing counsel relied upon certain decisions.

6. I have given careful consideration to the submissions made by the respective counsels.

7. Section 264 (3) of the Act provides for filing of an application for revision, within a period of one year from the date of the order in question and in case, the applicant is able to show sufficient cause for not filing the application within the period of one year, the same could be condoned by the Commissioner. The reason assigned by the petitioner herein before the Commissioner for belatedly filing the Revision Petition was that a cause of action for filing the revision petition arose only after the ITAT had allowed the appeal for the Assessment Year 1994-95 on 27.06.1995, which order is claimed to be received by the petitioner on 25.03.2005. The petitioner had thereafter

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filed the revision under Section 264 on 06.02.2006 in respect of the Assessment Year 1995-96, and on 19.05.2006 in respect of the Assessment Years 1996-97 and 1997-98. The reason for not filing the revision is apparently evident, since the ITAT order in favour of the petitioner was not available. The number of days' delay may not be a criteria for determining the cause for the delay and that as to whether the reasons assigned by the petitioner could be termed as a "sufficient cause alone" could be relevant. In view of the possible benefit, the petitioner could derive by placing reliance on the orders of the ITAT, which was also confirmed by the High Court in Tax Case Appeal No.2257 of 2006, the petitioner was awaiting the outcome of the orders of the ITAT relating to the Assessment Years 1993-94 and 1994-95 and such a reason was also shown to be the cause for the delay in filing the Revision under Section 264(3) of the Act. Such a reasoning has not been properly appreciated by the respondent herein, which seems to be a sufficient cause for the delay. As such, the respondent herein ought to have exercised its discretion and accepted the reasoning given by the petitioner to be a sufficient cause.

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8. In the light of the above observations, the impugned order

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passed by the respondent in C.No.217/CIT-I/20/264/2005-2006 dated 09.03.2007 is hereby set aside. Consequently, the delay on the part of the petitioner in preferring the Revision Petitions under Section 264 of the Act stands condoned. The matter is therefore remanded back to the respondent herein for consideration of the Revision Petition on its own merits. The respondent herein shall endeavour to conclude the Revision Petitions as expeditiously as possible. The Writ Petitions are allowed accordingly. No costs.

20.**09.2019**

DP

Index:Yes
Order: Speaking

To

The Commissioner of Income Tax,
Chennai-I,
Room No.701, VII Floor, New Block,
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M.S.RAMESH, J.

DP

Order made in

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